

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 70.192

§§ 70.170 and 70.207(a)(2) of this part with respect to surplus proceeds.

(26 U.S.C. 6339)

§ 70.187 Records of sale.

(a) *Requirement.* Each appropriate TTB officer shall make a record of all sales under 26 U.S.C. 6335 of real property situated within his or her jurisdiction and of redemptions of such property. The records shall set forth the tax for which any such sale was made, the dates of seizures and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed. In the case of redemption of the property, the records shall additionally set forth the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid. The original record shall be retained by the appropriate TTB officer.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the appropriate TTB officer shall be evidence in any court of the truth of the facts therein stated.

(26 U.S.C. 6340)

[T.D. ATF-301, 55 FR 47627, Nov. 14, 1990, as amended by T.D. ATF-450, 66 FR 29027, May 29, 2001]

§ 70.188 Expense of levy and sale.

The appropriate TTB officer shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the appropriate TTB officer shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

JUDICIAL PROCEEDINGS

Civil Action by the United States

SOURCE: Sections 70.191 through 70.193 added by T.D. ATF-301, 55 FR 47633, Nov. 14, 1990.

§ 70.191 Authorization.

(a) *In general.* A civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) will be commenced when the appropriate TTB officer, directs that the action be commenced.

(b) *Property held by banks.* The appropriate TTB officer shall not authorize or sanction any civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, from any deposits held in a foreign office of a bank engaged in the banking business in the United States or a possession of the United States unless the appropriate TTB officer believes:

(1) That the taxpayer is within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(2) That the taxpayer is not within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7401)

[T.D. ATF-301, 55 FR 47633, Nov. 14, 1990, as amended by 66 FR 29027, May 29, 2001]

§ 70.192 Action to enforce lien or to subject property to payment of tax.

(a) *Civil actions.* In any case where there has been a refusal or neglect to

pay any tax (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or designated delegate at the request of the appropriate TTB officer, may direct a civil action to be filed in any court of the United States to enforce the lien of the United States under the Internal Revenue Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which the delinquent has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the appropriate TTB officer during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(b) *Bid by the United States.* If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale a sum which does not exceed the amount of its lien and the expenses of the sale. See also 31 U.S.C. 3715.

(26 U.S.C. 7403)

[T.D. ATF-301, 55 FR 47633, Nov. 14, 1990, as amended by 66 FR 29027, May 29, 2001]

§ 70.193 Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be paid to the Bureau as collections of taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7406)

Proceedings by Taxpayers and Third Parties

SOURCE: Sections 70.202 through 70.213 added by T.D. ATF-301, 55 FR 47634, Nov. 14, 1990, unless otherwise noted.

§ 70.202 Intervention.

If the United States is not a party to a civil action or suit, the United States may intervene in such action or suit to assert any lien arising under provisions of 26 U.S.C. enforced and administered by the Bureau on the property which is the subject of such action or suit. The provisions of 28 U.S.C. 2410 (except subsection (b)) and of 28 U.S.C. 1444 shall apply in any case in which the United States intervenes as if the United States had originally been named a defendant in such action or suit. If the application of the United States to intervene is denied, the adjudication in such civil action or suit shall have no effect upon such lien.

(26 U.S.C. 7424)

§ 70.203 Discharge of liens; scope and application; judicial proceedings.

(a) *In general.* A tax lien of the United States, or a title derived from the enforcement of a tax lien of the United States, may be discharged or divested under local law only in the manner prescribed in 28 U.S.C. 2410 or in the manner prescribed in 26 U.S.C. 7425. Title 26 U.S.C. 7425(a) contains provisions relating to the discharge of a lien when the United States is not joined as a party in the judicial proceedings described in subsection (a) of 28 U.S.C. 2410. These judicial proceedings are plenary in nature and proceed on formal pleadings. Title 26 U.S.C. 7425(b) contains provisions relating to the discharge of a lien or a title derived from the enforcement of a lien in the event of a nonjudicial sale with respect to the property involved. Title 26 U.S.C. 7425(c) contains special rules relating to the notice of sale requirements contained in 26 U.S.C. 7425(b).

(b) *Judicial proceedings—(1) In general.* Title 26 U.S.C. 7425(a) provides rules, where the United States is not joined as a party, to determine the effect of a judgment in any civil action or suit described in subsection (a) of 28 U.S.C. 2410 (relating to joinder of the United States in certain proceedings), or a judicial sale pursuant to such a judgment, with respect to property on which the United States has or claims a lien under the provisions of 26 U.S.C. If the United States is improperly